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INLAND EMPIRE WATERKEEPER and ORANGE COUNTY COASTKEEPER

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

ORANGE COUNTY COASTKEEPER, a  
California non-profit corporation, and  
INLAND EMPIRE WATERKEEPER, a  
California non-profit corporation,

Plaintiffs,

v.

SAN BERNARDINO STEEL, INC., a  
California Corporation, and THE  
HERRICK CORPORATION, a California  
Corporation;

Defendants.

Case No.: 5:15-CV-01256 VAP FFMx)

**CONSENT DECREE**

**(Federal Water Pollution Control Act,  
33 U.S.C. § 1251 et seq.)**

**CONSENT DECREE**

The following Consent Decree is entered into by and between Plaintiffs Inland Empire Waterkeeper and Orange County Coastkeeper (“Plaintiffs” or “Waterkeeper”), and Defendants San Bernardino Steel, Inc. and The Herrick Corporation (“Defendants” or “San Bernardino Steel”). The entities entering into this Consent Decree are each an individual “Settling Party” and collectively “Settling Parties.”

**WHEREAS**, Orange County Coastkeeper is a non-profit public benefit corporation organized under the laws of the State of California;

**WHEREAS**, Inland Empire Waterkeeper is a program of Orange County Coastkeeper;

**WHEREAS**, together, Inland Empire Waterkeeper and Orange County Coastkeeper are dedicated to the preservation, protection, and defense of the environment, wildlife, and natural resources of local surface waters;

**WHEREAS**, Defendants operate a fabricated structural metal facility, located at 5454 Industrial Parkway, San Bernardino, California 92407 (the “Facility”) that is currently regulated by the Storm Water Permit under WDID 8-36I002420;

**WHEREAS**, Waterkeeper alleges that Defendants are the owners and operators of the Facility;

**WHEREAS**, stormwater discharges associated with industrial activity at the Facility are regulated pursuant to the National Pollutant Discharge Elimination System (“NPDES”) General Permit No. CAS000001 [State Water Resources Control Board], Water Quality Order No. 2014-57-DWQ (“Storm Water Permit”), and the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 *et seq.* (“Clean Water Act” or “CWA”), Sections 301(a) and 402, 33 U.S.C. §§ 1311(a), 1342. These industrial activities include, *inter alia*, receiving structural steel; fabricating steel columns; abrasive blasting; vehicle maintenance, cleaning, and storage; vehicle fueling; transporting raw materials across the site; and raw and finished materials storage;

1       **WHEREAS**, Waterkeeper contends that Defendants’ operations at the Facility  
2 result in discharges of pollutants into Cable Creek, which flows into the Devil Creek  
3 diversion and Cajon Creek, joining Lytle Creek downstream, and then connecting with  
4 Reach 4 of the Santa Ana River, and ultimately the Pacific Ocean (collectively  
5 “Receiving Waters”) and further contends those discharges are regulated by the Clean  
6 Water Act, Sections 301(a) and 402, 33 U.S.C. §§ 1311(a), 1342;

7       **WHEREAS**, the Storm Water Permit includes the following requirements for all  
8 permittees, including Defendants: (1) develop and implement a stormwater pollution  
9 prevention plan (“SWPPP”), (2) control pollutant discharges using, as appropriate, best  
10 available technology economically achievable (“BAT”) or best conventional pollutant  
11 control technology (“BCT”) to prevent or reduce pollutants, (3) implement BAT and  
12 BCT through the development and application of Best Management Practices (“BMPs”),  
13 which must be included and updated in the SWPPP, and, (4) when necessary, implement  
14 additional BMPs to prevent or reduce any pollutants that are causing or contributing to  
15 any exceedance of water quality standards;

16       **WHEREAS**, on April 17, 2015, Waterkeeper served the registered agent for  
17 service of process for Defendants, the Administrator of the U.S. Environmental  
18 Protection Agency (“EPA”), the Executive Director of the State Water Resources Control  
19 Board (“State Water Board”), the Executive Officer of the California Regional Water  
20 Quality Control Board, Santa Ana Region, (“Regional Water Board”), and the Regional  
21 Administrator of EPA Region IX, with a notice of intent to file suit (“60-Day Notice”)   
22 under Section 505(b)(1)(a) of the of the Clean Water Act, 33 U.S.C. § 1365(b)(1)(A),  
23 alleging violations of the Clean Water Act and the Storm Water Permit and its previous  
24 version, Water Quality Order No. 92-12-DWQ (as amended by Water Quality Order 97-  
25 03-DWQ), at the Facility;

26       **WHEREAS**, on June 28, 2015, Waterkeeper filed a complaint against Defendants  
27 in the United States District Court, Central District of California (Civil Case No. 5:15-cv-  
28 01256 RSWL (FFM)) (“Complaint”);

1       **WHEREAS**, on July 8, 2015, this case was reassigned to Judge Virginia A.  
2 Phillips, and renumbered as Civil Case No. 5:15-cv-01256 VAP (FFMx);

3       **WHEREAS**, Waterkeeper alleges Defendants are in violation of the substantive  
4 and procedural requirements of the Storm Water Permit and the Clean Water Act;

5       **WHEREAS**, Defendants deny all allegations and claims contained in the 60-Day  
6 Notice and the Complaint and reserve all rights and defenses with respect to such  
7 allegations and claims;

8       **WHEREAS**, the Parties have agreed that it is in their mutual interest, and  
9 therefore choose, to resolve Waterkeeper's allegations in the 60-Day Notice and  
10 Complaint through settlement and avoid the cost and uncertainties of further litigation;  
11 and

12       **WHEREAS**, all actions taken by Defendants pursuant to this Consent Decree shall  
13 be made in compliance with all applicable Federal and State laws and local rules and  
14 regulations.

15       **NOW, THEREFORE, IT IS HEREBY STIPULATED BETWEEN THE**  
16 **SETTLING PARTIES FOR THE SOLE PURPOSE OF FACILITATING ENTRY**  
17 **AND ENFORCEMENT OF THIS CONSENT DECREE, AND ORDERED AND**  
18 **DECREEED BY THE COURT, AS FOLLOWS:**

19       1.     The Court has jurisdiction over the subject matter of this action pursuant to  
20 Section 505(a)(1)(A) of the Clean Water Act, 33 U.S.C. § 1365(a)(1)(A);

21       2.     Venue is appropriate in the Central District Court pursuant to Section  
22 505(c)(1) of the Clean Water Act, 33 U.S.C. § 1365(c)(1), because the Facility at which  
23 the alleged violations took place is located within this District;

24       3.     The Complaint states claims upon which relief may be granted against  
25 Defendants pursuant to Section 505 of the Clean Water Act, 33 U.S.C. § 1365;

26       4.     Plaintiffs have standing to bring this action; and

27       5.     By so stipulating, and because they do so only in furtherance of this Consent  
28

Decree, Defendants do not admit or concede any fact alleged by Plaintiffs in the Complaint to support their standing (in either this case or any future litigation) or any of their claims.

## **I. OBJECTIVES**

6. Without admitting any allegation or claim, it is the express purpose of the Settling Parties to settle the claims alleged by Waterkeeper in its complaint. In light of this objective and as set forth fully below, Defendants agree to comply with this Consent Decree, as well as the Storm Water Permit and all applicable provisions of the Clean Water Act. Specifically, the Storm Water Permit requires BMPs be developed and implemented to achieve BAT and the BCT, to achieve compliance with the applicable water quality standards, to prepare reports to track the Facility's compliance, and to assess its need for any improvements or changes at the Facility as a consequence. In consideration of Defendants' agreement, and pursuant to the terms set forth below, Waterkeeper agrees to dismiss this lawsuit.

## **II. AGENCY REVIEW, EFFECTIVE DATE, TERM OF CONSENT DECREE, AND EARLY TERMINATION**

7. **Agency Review:** Plaintiffs shall submit this Consent Decree to the United States Department of Justice and the U.S. EPA (collectively "Federal Agencies") within three (3) business days of the final signature of the Settling Parties for agency review, consistent with 40 C.F.R. § 135.5. In the event that the Federal Agencies object to entry of this Consent Decree, the Settling Parties agree to meet and confer to attempt to resolve the issue(s) raised by the Federal Agencies within a reasonable amount of time. Following the Federal Agencies' review, the Parties shall submit the Consent Decree to the Court for entry.

8. **Effective Date:** The Effective Date of this Consent Decree shall mean the day this Consent Decree is fully executed by the Settling Parties.

9. **Term of Consent Decree:** This Consent Decree shall terminate three (3) years from the Effective Date, or July 31, 2019, whichever is later, unless there is an

ongoing, unresolved dispute regarding Defendants' compliance with the Consent Decree, in which case the Consent Decree will terminate within fifteen (15) days of notice by the Settling Parties that the dispute has been fully resolved.

10. **Early Termination:** If Defendants should cease industrial operations at the site and file a Notice of Termination ("NOT") under the Storm Water Permit before the termination date of this Consent Decree, Defendants shall send Waterkeeper a copy of the proposed NOT concurrent with its submittal to the Regional Water Board. Within ten (10) days of the Regional Water Board's approval of the NOT, Defendants shall notify Waterkeeper in writing of the approval and remit all outstanding payments, including stipulated payments, to Waterkeeper. In the event a new successor or assign continues industrial operations at the site and assumes responsibility for implementation of this Consent Decree pursuant to Paragraph 121, Defendants shall notify Waterkeeper within ten (10) days of the transition.

### **III. COMMITMENTS OF THE SETTLING PARTIES**

#### **A. Storm Water Pollution Control Best Management Practices**

11. In addition to maintaining the current BMPs at the Facility, Defendants shall develop and implement the BMPs identified herein, as well as any other BMPs necessary to comply with the provisions of this Consent Decree and the Storm Water Permit. Specifically, Defendants shall develop and implement BMPs consistent with the BAT and BCT standards as required by the Storm Water Permit, to prevent and/or reduce contamination in storm water discharged from the Facility, and to comply with applicable water quality standards.

12. Listing the BMPs identified herein shall not preclude Defendants from implementing BMPs not listed, and does not require amendment of this Consent Decree in the event that Defendants implement additional BMPs beyond those listed or substitutes BMPs that are designed to achieve the Table 1 Numeric Targets for those listed herein, or if changes in operations or the industrial activities at the Facility eliminate pollutants sources identified in the SWPPP and/or this Consent Decree making



1 the BMPs previously associated with those pollutant sources unnecessary. Defendants  
2 shall notify Waterkeeper of changes to BMPs pursuant to the notice sections of this  
3 Consent Decree.

4       **13. Pretreatment and Onsite Detention Pond:** Defendants shall design a  
5 detention pond, together with an adjacent bio-strip, to treat, capture, and infiltrate runoff  
6 from approximately 23 acres of the southern portion of the Facility, as identified in the  
7 revised SWPPP. The onsite runoff will be routed through the bio-strip before entering the  
8 detention pond. The bio-strip will be approximately .2 to .4 acres and will be  
9 approximately 30 feet in width. The detention pond shall be lined with low-growth  
10 annual plantings that do not require irrigation or maintenance, other than occasional  
11 mowing.

12       **14. Detention Pond Capacity:** The site-specific pretreatment and on-site  
13 detention pond shall have a design capture volume (“DCV”) of an 85th percentile, 24-  
14 hour storm event for the San Bernardino area.

15       **15. Permitting and Approval:** Defendants shall complete detention pond design  
16 and obtain all necessary permits and approvals no later than September 30, 2016. Once  
17 Defendants have obtained the relevant permits, the detention basin shall be constructed  
18 and operational within sixty (60) days. Defendants shall diligently file and pursue all  
19 required local agency applications for permits for the detention pond and shall diligently  
20 pursue the procurement of contractors, labor and materials to complete the detention  
21 pond by the September 30, 2016 deadline, and shall use their best efforts to meet this  
22 deadline. If, after using best efforts to meet this deadline, Defendants cannot attain the  
23 deadline due to circumstances beyond their control (such as delay in obtaining any  
24 required governmental permits or approvals), they shall be excused from meeting this  
25 deadline so long as Defendants continue to exercise due diligence and best efforts in  
26 pursuing the permitting and implementation of the BMP. Furthermore, any excused delay  
27 shall not excuse Defendants from implementing other, unexcused obligations under this  
28 Consent Decree. Either party may invoke dispute resolution pursuant to Section VI below

1 if a dispute arises regarding the implementation of the detention pond and such disputes  
2 shall be resolved pursuant to the dispute resolution procedures in Section VI.

3 16. Interim Period: Until such time as the detention pond BMP is implemented,  
4 Defendants shall implement the identified BMPs herein and will continue to implement  
5 such BMPs as stated in the SWPPP.

6 17. System Inspection Logs: Upon installation of the detention pond and  
7 pretreatment systems, Defendants shall maintain logs ("System Inspection Logs") in  
8 which observations made during monthly inspections of the system are recorded. For  
9 each system, the observation log shall include the location of the system observed, the  
10 date and time of the inspection, the person performing the inspection, and any corrective  
11 action taken. The System Inspection Log shall be made available for inspection by  
12 Waterkeeper at any site inspection or otherwise within fourteen (14) business days of an  
13 advance request by Waterkeeper

14 18. Maintenance of BMP Structural Controls: Beginning on the Effective Date  
15 or the date of installation, Defendants shall maintain all structural BMPs at the Facility in  
16 good operating condition and shall promptly repair any damaged or degraded structural  
17 BMPs.

18 19. Maintenance Log of BMPs: Beginning on the Effective Date or the date of  
19 installation, Defendants shall maintain logs ("Maintenance Logs") in which observations  
20 made during monthly inspections of structural BMPs, apart from the on-site detention  
21 and pretreatment systems, are recorded. For each structural BMP, the observation log  
22 shall include the location of the structural BMP observed, the date and time of the  
23 inspection, the person performing the inspection, and any corrective action taken.

24 20. **Additional BMPs**: The BMPs included in this Section constitute a  
25 preliminary approach to stormwater management at the Facility for the first year of the  
26 agreement. If, after implementing these BMPs, the sampling conducted in accordance  
27 with Section IV of this Consent Decree indicates that the Facility's stormwater discharges  
28 exceed the Numeric Limits in Table 1 or do not meet water quality standards, Defendants



1 shall propose additional BMPs as part of any Action Plan prepared in accordance with  
2 Paragraphs 67-69 below.

3       21.     **Substitute BMPs:** Should Defendants decide to substitute BMPs for  
4 equivalent or more effective BMPs, they shall notify Waterkeeper before implementing  
5 the substituted BMPs pursuant to the Notice Provision in Paragraph 86 below.

6       22.     **Unauthorized Non-Storm Water Discharges:** Beginning on the Effective  
7 Date of this Consent Decree, Defendants shall eliminate all non-authorized non-storm  
8 water discharges from the Facility.

9       23.     **Non-Structural Best Management Practices:** Defendants shall implement  
10 the following non-structural BMPs:

11       24.     Rain Gauge: Defendants shall install a rain gauge capable of measuring and  
12 recording rainfall from at least 0.1 inches at the Facility. Defendants shall provide rain  
13 gauge data to Waterkeeper within fourteen (14) days of receipt of a written request by  
14 Waterkeeper. System performance will be measured using the data generated by the rain  
15 gauge located at the Facility. Following the complete implementation of pretreatment and  
16 the on-site detention pond, discharges from the Facility occurring as a result of  
17 precipitation that exceeds the designed or constructed detention pond's DCV ("Design  
18 Storm") shall not be required to meet the Numeric Limits in Table 1.

19       25.     Defendants shall undertake additional housekeeping BMPs as identified in  
20 Defendants' SWPPP.

21       B.     **Visual Observations**

22       26.     Storm Water Discharge Observations: During the life of this Consent  
23 Decree, Defendants shall conduct visual observations at a discharge location when it  
24 performs sampling as required by the Storm Water Permit and this Consent Decree.

25       27.     Non-Storm Water Discharge Observations: During the life of this Consent  
26 Decree, Defendants shall conduct monthly non-storm water visual observations at Outfall  
27 2 and, after it becomes operational, the discharge point in the detention pond.

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1           28. Visual Observation Records: Defendants shall maintain observation records  
 2 to document compliance with this section, and shall provide Waterkeeper with a copy of  
 3 these records pursuant to the terms of this Consent Decree.

4           **C. Employee Training**

5           29. Training Program: Within forty-five (45) days of the Effective Date,  
 6 Defendants shall develop and have begun to implement an employee training program to  
 7 ensure: (1) that there are sufficient number of employees delegated to achieve compliance  
 8 with the Storm Water Permit and this Consent Decree, and (2) that these employees are  
 9 properly trained to perform the activities required by the Storm Water Permit and this  
 10 Consent Decree (“Training Program”). At a minimum, the Training Program shall require  
 11 the following:

12           30. SWPPP and BMP Training: Defendants shall train all employees who work  
 13 in areas where industrial materials or activities are exposed to storm water, or who are  
 14 responsible for implementing activities necessary to meet elements of the SWPPP  
 15 (“Responsible Employees”), on the SWPPP and on the BMPs identified in this Consent  
 16 Decree to ensure that BMPs are implemented effectively and on schedule, and that  
 17 structural BMPs are maintained properly. Defendants shall train such employees on their  
 18 specific responsibilities in implementing BMPs. The training must include proper  
 19 handling (collection, storage, and disposal) of liquids and sand-blasting materials.

20           31. Storm Water Sampling Training: Defendants shall designate an adequate  
 21 number of employees necessary to collect storm water samples as required by this  
 22 Consent Decree. The Training Program shall include the proper sampling protocols,  
 23 including chain of custody requirements, to ensure storm water samples are properly  
 24 collected, stored, and submitted to a certified laboratory or analyzed onsite, as applicable.

25           32. Training Language: Defendants shall conduct the Training Program in the  
 26 language or languages in which all employees participating are fluent.

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1           33. Frequency: The Training Program shall be repeated annually, or as  
2 necessary to ensure that all Responsible Employees are familiar with the requirements of  
3 this Consent Decree and the Storm Water Permit.

4           34. New Employees: All new staff who will be Responsible Employees will  
5 participate in the Training Program before assuming responsibilities for compliance with  
6 this Consent Decree or the Storm Water Permit.

7           35. Visual Observation Training: Defendants shall provide training on how and  
8 when to properly conduct visual observations to all Responsible Employees performing  
9 visual observations at the Facility. All new staff who will be Responsible Employees  
10 will receive this training before assuming responsibilities for implementing the SWPPP.

11           36. Non-Stormwater Discharge Training: Defendants shall train all employees  
12 at the Facility on the Storm Water Permit's prohibition of non-stormwater discharges, so  
13 that they know what non-stormwater discharges are, that non-stormwater discharges can  
14 result from improper surface washing or dust control methods, and how to detect and  
15 prevent non-stormwater discharges.

16           37. Knowledgeable Representative: The Training Program shall be provided by  
17 a private consultant or representative of Defendants who are familiar with the  
18 requirements of this Consent Decree and the Storm Water Permit.

19           38. Training Records: Defendants shall maintain training records to document  
20 compliance with this section.

21           39. Integration of Employee Training into SWPPP: If and when appropriate,  
22 Defendants shall integrate any new training requirements resulting from this Consent  
23 Decree into the Facility SWPPP. Defendants shall also update the SWPPP, if and when  
24 appropriate, to identify the positions responsible for carrying out stormwater  
25 management, monitoring, sampling, and SWPPP implementation.

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1           **D.     Storm Water Pollution Prevention Plan**

2           40.     Within thirty (30) days of the Effective Date, Defendants shall amend the  
3 Facility SWPPP to incorporate the requirements and BMPs set forth in Section I and  
4 Section X of the Storm Water Permit and Section III of this Consent Decree, and submit  
5 the updated SWPPP to Waterkeeper within fourteen (14) business days thereafter.

6 Defendants' revised SWPPP will be an attachment to this Consent Decree, fully  
7 enforceable by Waterkeeper and the Court.

8           41.     Site Map and Description: Defendants shall ensure that the SWPPP includes  
9 an updated Site Map to comply with the Storm Water Permit, Section X.E. The Site Map  
10 shall clearly denote (a) the topography and the direction of stormwater flow for each  
11 drainage area of the Facility, (b) identify property boundaries, (c) known or suspected  
12 drop inlets, (d) ground type (pervious or impervious), (e) berms and the materials they are  
13 composed of, (f) discharge points, (g) sampling points, (h) infiltration basins and  
14 bioswales, (i) any permanent structures and features, and (j) all other physical structures  
15 or items relevant under the Storm Water Permit and this Consent Decree. During the  
16 term of the Consent Decree, if Defendants make significant changes to the Facility, such  
17 as moving a discharge or sampling point, modifying the topography of the site so as to  
18 change a drainage area, or removing or adding structural BMPs, Defendants shall update  
19 the SWPPP within forty-five (45) days and submit the revised SWPPP to Waterkeeper,  
20 Regional Water Board, and State Water Board, consistent with the requirements of  
21 Paragraph 47 of this Section.

22           42.     Change of Industrial Processes: If, during the term of the Consent Decree,  
23 Defendants change the Facility's industrial processes or operation in a way that increases  
24 the quantity or frequency of pollutant discharges, then Defendants shall notify Plaintiffs  
25 within thirty (30) days of such change(s) and conduct sampling for qualifying pollutants  
26 as required by the Permit. These SWPPP revisions shall occur within forty-five (45) days  
27 of the changes in operations.

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43. Change of Programs: Should Defendants revise its SWPPP in the future, including revisions to programs detailed within the SWPPP, such as sampling, monitoring, and reporting, Defendants agree to submit the revised document to Waterkeeper for review within thirty (30) days of the revisions.

44. Visual Inspection Checklist: Defendants shall create a visual inspection checklist that must be used by trained facility personnel when conducting the visual observations and monitoring of storm water required under this Consent Decree.

45. Training Program: Defendants shall include the Training Program requirements listed in Paragraphs 29-30.

46. **Additional Revisions to the SWPPP**: Defendants shall revise the Facility's SWPPP if there are any changes in the Facility's operations that will alter storm water management such that the SWPPP is no longer accurate, including but not limited to changes to storm water discharge point(s) or changes or additions to the BMPs at the Facility, whether made pursuant to an Action Plan or not, within thirty (30) days of the occurrence of any of the events listed in this Consent Decree.

47. **Waterkeeper's Review of SWPPP**: Defendants shall submit each revised SWPPP to Waterkeeper for review and comment within five (5) days of its completion. Waterkeeper shall have thirty (30) days from the receipt of any amended SWPPP to propose any changes to the SWPPP. Within thirty (30) days of notification by Waterkeeper of any proposed changes to the SWPPP, Defendants shall incorporate all of Waterkeeper's changes to the amended SWPPP, or else justify in writing why any comment is not incorporated within thirty (30) days of receiving the comments.

48. **Disputes**: Any disputes as to the adequacy of the SWPPP or any individual program revisions shall be resolved pursuant to the dispute resolution procedures in Section VI below.

#### IV. SAMPLING, MONITORING, INSPECTION & REPORTING

49. **Stormwater Sampling Program**: Defendants shall continue to collect stormwater samples from Outfall 2 before the detention pond is operational, and then also

1 from the detention pond's discharge point after the pond is operational during the term of  
2 the Consent Decree, as described below. For purposes of this Consent Decree, this  
3 includes storm water discharge(s) occurring during the Facility's operating hours, or, if  
4 storm water is stored onsite prior to discharge, whenever stormwater is released outside  
5 these hours. Any failure to sample a discharge from the discharge points referenced  
6 above shall be documented and submitted to Waterkeeper within five (5) days of the date  
7 a sample could have been collected but was not. Defendants shall analyze the samples for  
8 the constituents identified in Table 1.

9       **50. Waterkeeper's Review of Revised M&RP:** Defendants agree to submit the  
10 Monitoring and Reporting Program ("M&RP") to Waterkeeper for review and comment  
11 as soon as it is completed but in any event, no later than thirty (30) days from the  
12 Effective Date of this Consent Decree. Waterkeeper shall provide comments, if any, to  
13 Defendants within thirty (30) days of receipt of the M&RP. Defendants shall incorporate  
14 Waterkeeper's comments into the M&RP, or shall justify in writing why any comment is  
15 not incorporated within fourteen (14) days of receiving comments. Any disputes as to the  
16 adequacy of the M&RP shall be resolved pursuant to the dispute resolution provisions in  
17 Section VI below.

18       **51. Additional Revisions to M&RP:** Defendants shall revise the M&RP if  
19 there are any changes in a Facility's discharge point(s), if Defendants discover a change  
20 in a Facility's storm water discharge point(s), or as applicable to incorporate sample  
21 sampling or monitoring change in any Action Plan(s). Defendants shall submit any  
22 revised M&RP to Waterkeeper for review and comment within fifteen (15) days of  
23 completion. Waterkeeper shall provide comments, if any, to Defendants within thirty (30)  
24 days of receipt of any revised M&RP, or shall justify in writing why any comment is not  
25 incorporate within thirty (30) days of receiving comments.

26       **52. Disputes:** Any disputes as to the adequacy of the M&RP shall be resolved  
27 pursuant to the dispute resolution provisions of this Consent Decree, as set out in Section  
28 VI below.



53. **Sampling:** The following storm water monitoring procedures shall be implemented at the Facility:

54. Frequency: During the life of this Consent Decree, Defendants shall collect samples of any storm water discharge from the Facility during the scheduled operating hours as defined in the SWPPP as a result of a Qualified Storm Event (“QSE”) as defined in the Storm Water Permit as follows: for the 2016-2017 wet season (defined as October 1-May 31), all QSEs shall be sampled. Should the Facility’s samples test below applicable Numeric Action Levels during the 2016-2017 wet season, the Facility may reduce its sampling to frequencies consistent with its Storm Water Permit for the 2017-2018 wet season. For the 2018-2019 wet season, the Facility may follow the protocol found at Section XI.C.7 of its Storm Water Permit if applicable.

55. For all sampling events, if stormwater is stored onsite prior to discharge, samples shall be collected during first hour of discharge.

56. Discharge Locations: During the life of this Consent Decree, Defendants shall collect samples from Outfall 2 for so long as the Facility discharges storm water to it. After the detention pond becomes operational, Defendants shall also collect samples from the discharge point in the detention pond.

57. Parameters: All samples collected pursuant to this section shall be analyzed for the parameters listed in Table 1.

58. Change of Industrial Activities: Should industrial processes materially change at the Facility, Defendants shall notify Waterkeeper pursuant to the Notice Provision of Section 34 below. Defendants shall conduct sampling for any additional toxic priority pollutants listed in 40 C.F.R. § 131.38 likely to be present in the Facility’s stormwater discharges in significant quantities as a result of the changed industrial processes.

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1           59.   Lab: Except for pH samples, Defendants shall have all stormwater samples  
2 collected pursuant to this Consent Decree delivered to a California state certified  
3 environmental laboratory for analysis within the time needed for analysis within  
4 laboratory method allowable hold times, pursuant to 40 C.F.R. Part 136. However, pH  
5 will be analyzed onsite using a calibrated portable instrument for pH in accordance with  
6 accompanying manufacturer's instructions.

7           60.   Detection Limit: The laboratory shall thereafter conduct analysis sufficient  
8 to detect individual constituents at or below the values set forth in Table 1.

9           61.   Holding Time: All samples collected from the Facility shall be delivered to  
10 the laboratory and analyzed within the holding times required in 40 C.F.R. Part 136,  
11 excepting pH, which will be analyzed onsite using a calibrated portable instrument for pH  
12 in accordance with accompanying manufacturer's instructions.

13           62.   Lab Reports: Defendants shall request the sample-analysis results and  
14 associated chain of custody forms be reported to them within fourteen (14) days of  
15 laboratory receipt of the sample.

16           63.   Reports to Waterkeeper: After the Effective Date of this Consent Decree,  
17 Defendants shall provide complete results from sampling and analysis to Waterkeeper  
18 within fourteen (14) days of receipt of the laboratory report from each sampling event.

19           64.   Sampling Reduction: Defendants may discontinue analyzing stormwater  
20 samples collected pursuant to this Consent Decree at any discharge location(s) for a  
21 constituent listed in Table 1 that is not otherwise required by the Storm Water Permit, if  
22 the sample result for the Table 1 constituent is not detected for four (4) consecutive  
23 sample results, and Defendants have collected and analyzed the sample pursuant to this  
24 Consent Decree.

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65. **Numeric Limits:** Laboratory results of parameters in samples collected from the Facility's discharge points shall not exceed the limits ("Numeric Limits") in Table 1<sup>1</sup>. Any discharge from the Facility in excess of, or outside the range of, the Numeric Limits in Table 1 during a single reporting year shall trigger the Action Plan requirements of this Consent Decree. Nothing in this Consent Decree shall constitute or imply an admission or concession on Defendants' part that they are liable for any exceedances (past, present and future) caused by discharges at Outfall 2.

66. Table 1 – Numeric Targets for Storm Water Discharges

| Contaminant                        | Numeric Limit<br>(All but pH expressed as mg/L;<br>hardness dependent limits in bold) |
|------------------------------------|---|
| Total Suspended Solids             | 100   |
| Oil and Grease (O&G)               | 15  |
| Chemical Oxygen Demand (COD)       | 120   |
| Biochemical Oxygen Demand<br>(BOD) | 30  |
| Total Recoverable Aluminum         | 0.75  |
| Total Recoverable Iron             | 1.0   |
| Total Recoverable Mercury          | 0.0024  |
| Total Recoverable Zinc             | <b>0.260</b>  |
| Dissolved Copper                   | <b>0.032</b>  |
| Dissolved Lead                     | <b>0.170</b>  |

<sup>1</sup> Several of the Numeric Limits are hardness dependent. The hardness dependent limits are in bold, and have been adjusted using methods provided in Appendix J of the 2008 EPA Multi-Sector General Permit and/or the California Toxics Rule as applicable based on hardness data for the Santa Ana River. Table 1 uses a hardness of 250 mg/L CaCO<sub>3</sub>, based on hardness data for the Santa Ana River as prepared by the Santa Ana Watershed Project Authority and reported in the 2011 Annual Report of Santa Ana River Water Quality.

|                           |                 |
|---------------------------|-----------------|
| Total Recoverable Arsenic | 0.1685          |
| pH                        | 6.5 to 8.5 s.u. |
| N+N                       | 0.68            |

67. **Action Plan for Table 1 Numeric Target Exceedance:** Defendants shall submit an Action Plan for reducing and/or eliminating the discharge of pollutants if any sampling for any contaminant demonstrates that any contaminant found in Table 1 exceeds the Numeric Limit. Discharges from the Facility occurring as a result of precipitation that exceeds the Design Storm shall not implicate the requirement for Defendants to prepare an Action Plan. Defendants' obligations under the Consent Decree do not displace Defendants' obligations to sample and comply with the Storm Water Permit's ERA process. In any year that an Action Plan is required, it shall be submitted by the following July 1.

68. **Requirements:** Each Action Plan submitted shall include at a minimum: (1) the identification of the pollutant(s) discharged in excess of the Numeric Limit(s); (2) an assessment of the source of each pollutant exceedance; (3) the identification of additional BMPs, including treating storm water prior to discharge from the Facility, that will be implemented to achieve compliance with the Numeric Limit(s); and (4) time schedules for implantation of the proposed BMPs.

69. **Time Schedule:** The time schedule(s) for implementation shall ensure that all BMPs are implemented as soon as possible, but in no case later than October 1 of that year. If structural BMPs are proposed, and agreed to between the Parties, which require agency approval, then Defendants shall contact Waterkeeper to request an extension of the deadline, if necessary, to implement the structural BMPs. Waterkeeper's consent to Defendants' requested extension shall not be unreasonably withheld. Any time an Action Plan is completed after Waterkeeper's review, as set forth in Paragraph 70 below, Defendants shall also revise their M&RP and SWPPP as applicable within thirty (30) days.

1           70.   Waterkeeper's Review of Action Plan: Waterkeeper shall have thirty (30)  
2 days from receipt to propose revisions to the Action Plan. However, if Waterkeeper  
3 notifies Defendants within thirty (30) days of receipt of the Action Plan that it is unable  
4 to provide comments within thirty (30) days, Waterkeeper shall have an additional fifteen  
5 (15) days to propose revisions to the Action Plan. Within thirty (30) days of receiving  
6 Waterkeeper's proposed revisions, Defendants shall consider each of Waterkeeper's  
7 recommended revisions to the Action Plan and accept them or timely request to meet and  
8 confer, in accordance with this Consent Decree.

9           71.   Structural BMPs: If structural BMPs are proposed, and agreed to between  
10 the Parties, which require agency approval, then Defendants shall contact Waterkeeper to  
11 request an extension of the deadline, if necessary, to implement the structural BMPs.  
12 Waterkeeper's consent to Defendants' requested extension shall not be unreasonably  
13 withheld. Any time an Action Plan is completed after Waterkeeper's review, as set forth  
14 above, Defendant shall also revise its M&RP and SWPPP as applicable within thirty (30)  
15 days.

16           72.   Obligation of Consent Decree: Defendants shall implement the Action  
17 Plan(s) adopted pursuant to this Consent Decree as an obligation of this Consent Decree.

18           73.   Diligently File: Defendants shall diligently file and pursue all required local  
19 agency applications for permits and/or approvals for the BMPs included in any Action  
20 Plan. Defendants shall further diligently pursue the procurement of contractors, labor,  
21 and materials to complete all BMPs by the October 1 deadline.

22           74.   Implementation into SWPPP: Within thirty (30) days after BMPs set forth  
23 in an Action Plan pursuant to this Consent Decree are implemented, Defendants shall  
24 amend the Facility SWPPP to include all BMP revisions or additions not otherwise  
25 already implemented and included in the SWPPP and shall provide Waterkeeper with a  
26 copy of such revised SWPPP.

27  
28   ///

1           **75. Action Plan for Detention Pond DCV Deficiencies:** If Defendants' or  
 2 Waterkeeper's sampling, visual observations, and/or photographs provide evidence of a  
 3 discharge from the Facility inconsistent with the DCV, Defendants shall, within sixty  
 4 (60) days of that discharge, submit to Waterkeeper a plan to modify BMPs to comply  
 5 with that DCV Action Plan, including consideration of:

6           76. Improved housekeeping;

7           77. Increased detention basin size;

8           78. Convert to infiltration basin; and

9           79. Improved pretreatment.

10          80. The Action Plan shall include data, drawings, and other design rationale  
 11 demonstrating that the proposal shall achieve compliance with SWPPP, Storm Water  
 12 Permit and Consent Decree requirements.

13          81. Waterkeeper shall have sixty (60) days to comment on the Action Plan.

14          82. If the Settling Parties are unable to agree to the adequacy of the Action Plan,  
 15 either Settling Party may invoke dispute resolution procedures pursuant to Section VI  
 16 below.

17          83. **Duty to Evaluate.** Between October 1 and May 31 of each reporting year,  
 18 Defendants have an ongoing obligation to evaluate the BMPs implemented at the Facility  
 19 and included in this Consent Decree and any current or previous Action Plans, and, if  
 20 Defendants have exceeded Numeric Limits, make attempts to reduce the concentrations  
 21 to Numeric Limits or otherwise meet BAT or BCT, as appropriate, until May 31 of that  
 22 reporting year. Defendants shall use the results from subsequent stormwater samples as  
 23 they become available to assist with their ongoing evaluation of the effectiveness of  
 24 BMPs.

25          84. **Site Inspections:** During the life of this Consent Decree, Defendants shall  
 26 permit representatives of Waterkeeper to perform up to two (2) physical inspections per  
 27 year of the Facility during operating hours ("Site Inspection"). Waterkeeper shall  
 28 provide Defendants with forty-eight (48) hours of notice in advance of such Site



1 Inspections. Waterkeeper shall comply with all safety instructions provided to  
 2 Waterkeeper by Defendants' staff during all Site Inspections. During Site Inspections,  
 3 Waterkeeper shall be allowed to inspect and sample any stormwater discharges,  
 4 Maintenance Logs, Annual Records, employee training records, visual observation  
 5 training records, and take photos and/or videos related to Storm Water Permit or Consent  
 6 Decree compliance.

7       **85. Waterkeeper's Document Request Provision:** During the life of this  
 8 Consent Decree, and occurring no more than five (5) times per year, Defendants shall  
 9 provide records of their compliance with its SWPPP, the Storm Water Permit, and this  
 10 Consent Decree to Waterkeeper within fourteen (14) days of receipt of a written request  
 11 by Waterkeeper. Such requested documents may include reports of spills, rain gauge  
 12 data, visual observation records, corrective actions taken at the site, employee training  
 13 documents and training records, SWPPPs, system inspection logs, maintenance logs,  
 14 Action Plans, and any other documents relevant to Defendants' compliance with the  
 15 Storm Water Permit or the Consent Decree.

16       **86. Notice Provision:** Defendants shall provide Waterkeeper with written  
 17 notice of the above-listed occurrences/changes in compliance within 14 (fourteen) days  
 18 of the occurrence/change. Specifically, if it is a change to a document, Waterkeeper shall  
 19 provide comments, if any, to Defendants within thirty (30) days of receipt of the Notice.  
 20 Defendants shall incorporate Waterkeeper's comments in making the change to the  
 21 document, or else justify in writing why any comment was not incorporated within thirty  
 22 (30) days of receiving the comments. Any disputes arising from the noticed  
 23 occurrence/change shall be resolved pursuant to the dispute resolution procedures of  
 24 Section VI below.

25       **87. Submitted Documents Provision:** During the life of this Consent Decree,  
 26 Defendants shall provide Waterkeeper with a copy of all documents and communications  
 27 related to water quality submitted to the Regional Water Board, the State Water Board,  
 28 and/or any Federal, State, local agency, county, or municipality. Such documents and

reports shall be transmitted to Waterkeeper concurrently as they are sent to the agencies and/or municipalities. Any correspondence related to water quality received by Defendants from any Federal, State, local agency, county, or municipality shall be provided to Waterkeeper via email within three (3) business days of receipt by Defendants.

**V. ENVIRONMENTAL PROJECT, LITIGATION FEES AND COSTS, STIPULATED PENALTIES, COMPLIANCE MONITORING AND INTEREST**

88. **Environmental Project:** Defendants agree to make a payment of Seventy Thousand Dollars (\$70,000) to the Rose Foundation for Communities and the Environment to fund environmental project activities that will benefit the Southern California Bight and its watershed. The payment shall be made within ten (10) days of the entry of this Consent Decree by the Court payable to the “Rose Foundation for Communities and the Environment” and delivered via certified mail, overnight delivery, or wire transfer to: 1970 Broadway, Suite 600, Oakland, California 94612-2218. Defendants shall provide Waterkeeper with a copy of such payment at the time it is made.

89. **Waterkeeper’s Litigation Fees and Costs:** To satisfy Waterkeeper’s claim for its investigation fees and costs, expert/consultant fees and costs, reasonable attorneys’ fees, and other costs incurred as a result of investigating and filing the lawsuit, and negotiating this Consent Decree, Defendants shall pay a total of One Hundred Seventy Two Thousand Dollars (\$172,000.00). The payment shall be made within ten (10) days of the end of the 45-day Federal Agencies review period or within (10) days of the date the Federal Agencies inform the Court that they have no objections to entry of this Consent Decree, whichever is sooner, payable to: “Orange County Coastkeeper” and delivered by certified mail, overnight delivery, or wire transfer to: Orange County Coastkeeper, 3151 Airway Avenue, Suite F-110, Costa Mesa, CA 92626.

90. **Stipulated Penalties:** Defendants shall make stipulated payments for each failure to comply with the terms of this Consent Decree, as described in this paragraph. Payments for missed deadlines shall be made to “Rose Foundation for Communities and

the Environment” and delivered via certified mail, overnight delivery, or wire transfer to: 1970 Broadway, Suite 600, Oakland, California 94612-2218. Defendants agree to make the stipulated payment within thirty (30) days of a missed deadline. Defendants shall provide Waterkeeper with a copy of each such payment at the time it is made.

91. Failure to Collect Storm Water Samples: For each failure to collect a storm water sample as required by the SWPPP and Storm Water Permit, Defendants shall make a remediation payment of One Thousand Dollars (\$1,000) beginning with the 2016-2017 wet season.

92. Failure to Submit Documents: For each day the Defendants have failed to timely submit any document, report, or other communication required by the Consent Decree, Defendants shall pay Five Hundred Dollars (\$500) per day after the report due date, payable to the Rose Foundation.

93. Failure to Submit Payments: For each business day the Defendants have failed to submit payments required by the Consent Decree, Defendants shall pay Five Hundred Dollars (\$500) per day, payable to the Rose Foundation.

94. **Compliance Monitoring and Oversight:** Defendants agree to defray Waterkeeper’s monitoring of Defendants’ compliance with this Consent Decree in the amount of Five Thousand Dollars (\$5,000) per year, totaling Fifteen Thousand Dollars (\$15,000). Provided that Federal Agencies have not commented negatively on or objected to this Consent Decree, the payment shall be made within ten (10) business days following the conclusion of the 45-day Federal Agency review period. If the Federal Agencies have commented negatively or objected to entry of this Consent Decree, the payment shall be made within ten (10) business days of the approval and entry of the Consent Decree by the Court. The payment shall be made via wire transfer or check, made payable to: “Orange County Coastkeeper” and delivered by certified mail or overnight delivery, unless payment via wire transfer, to: Orange County Coastkeeper, 3151 Airway Avenue, Suite F-110, Costa Mesa, CA 92626.

///

1           95.   **Interest on Late Payments:** Defendants shall pay interest on any  
 2 payments, fee or costs owed to Waterkeeper under this Consent Decree that Waterkeeper  
 3 has not received by the date due. The interest shall accrue starting the first day after the  
 4 payment is due and shall be computed at 1.5% per month (18% per year).

5           96.   Nothing in Paragraphs 88, 89, and 94 shall be construed as a concession by  
 6 Defendants of the propriety or reasonableness of the payments identified therein.

## 7           **VI.   DISPUTE RESOLUTION**

8           97.   The Court shall retain jurisdiction over this matter for the life of the Consent  
 9 Decree for the purposes of enforcing its terms and conditions, and adjudicating all  
 10 disputes among the Settling Parties that may arise under the provisions of the Consent  
 11 Decree. The Court shall have the authority to enforce this Consent Decree with all  
 12 available legal and equitable remedies.

13          98.   If a dispute under this Consent Decree arises or if a Settling Party believes  
 14 that a breach of this Consent Decree has occurred, the Parties shall follow the following  
 15 procedure:

16          99.   Meet and Confer: The Party shall invoke the dispute resolution procedures  
 17 of this Section by notifying the other Settling Party in writing of the disputed matter(s).  
 18 The Settling Parties shall schedule a meet and confer in good faith (either telephonically  
 19 or in person) in an attempt to resolve the dispute informally over a period of ten (10) days  
 20 from the date of the notice. The Settling Parties may elect to extend this time in an effort  
 21 to resolve the dispute without court intervention. The Settling Parties shall bear their  
 22 own fees and costs associated with efforts to informally resolve the dispute without court  
 23 intervention.

24          100. If the Settling Parties cannot resolve a dispute by the end of meet and confer  
 25 and informal negotiations, the Party initiating the dispute resolution provision may  
 26 invoke formal dispute resolution by filing a motion before the United States District  
 27 Court for the Central District of California. The Settling Parties agree to request an  
 28 expedited hearing schedule on the motion.

101. Defendants agree not to challenge Waterkeeper's standing in any proceeding to enforce this Consent Decree under Section VI ("Dispute Resolution").

102. Fees and Costs To Resolve Dispute: The party that prevails on a motion brought under paragraph 100, *supra*, shall be entitled to reasonable attorneys' fees and costs.

103. For informal or formal dispute resolution, Defendants bear the burden of proving that their BMPs comply with the Consent Decree and the Storm Water Permit.

## **VII. MUTUAL RELEASE OF LIABILITY AND COVENANT NOT TO SUE**

104. **Waterkeeper's Release**: Waterkeeper, on its own behalf and on behalf of its officers, directors, employees, parents, subsidiaries, affiliates and each of their successors and assigns releases Defendants, their officers, directors, employees, members, parents, subsidiaries, affiliates, successors or assigns, agents, attorneys and other representatives, from and waives all claims raised in the 60-Day Notice and/or the Complaint, including all claims for fees (including fees of attorneys, experts, and others), costs, expenses, or any other sum incurred or claimed or which could have been claimed for matters included in the 60-Day Notice and/or the Complaint.

105. **Defendants' Waiver and Release of Waterkeeper**: Defendants, on their own behalf and on behalf of their officers, directors, employees, members, parents, subsidiaries, affiliates, or their successors or assigns release Waterkeeper and its officers, directors, employees, members, parents, subsidiaries, and affiliates, and each of their successors and assigns from, and waive all claims which arise from or pertain to, the 60-Day Notice and/or the Complaint, including all claims for fees (including fees of attorneys, experts, and others), costs, expenses or any other sum incurred or claimed or which could have been claimed for matters included in the 60-Day Notice and/or the Complaint.

106. Nothing in this Consent Decree limits or otherwise affects Waterkeeper's or Defendants' rights to address or take any position that they deem necessary or

appropriate in any formal or informal proceeding before the State Water Board, Regional Water Board, EPA, any other judicial or administrative body, or any other public forum. If either party anticipates taking a position adverse to the other regarding Defendants' compliance with this Consent Decree or claims raised in Plaintiffs' 60-day Notice or Complaint, specific to either or both Defendants, that party will provide reasonable written notice to the other party of such intent. Both parties agree to abide by the Consent Decree in good faith. Should either party deem any part of this Consent Decree illegal or unenforceable, the dispute resolution procedures identified in Section VI will apply.

### **VIII. MISCELLANEOUS PROVISIONS**

107. **No Admission of Liability:** Nothing in this Consent Decree, or implementation of additional BMPs, shall constitute or be construed as a concession of any factual or legal allegation in the 60-day notice or Complaint. Defendants maintain and reserve all defenses they may have to any allegation of a violation, now and in the future.

108. **Force Majeure:** Force Majeure includes any act of God, war, fire, earthquake, windstorm, flood or natural catastrophe; civil disturbance, vandalism, sabotage or terrorism; restraint by court order or public authority or agency; or action or non-action by, or inability to obtain the necessary authorizations or approvals from any governmental agency. Force Majeure shall not include normal inclement weather, economic hardship, or inability to pay. Any party seeking to rely upon this paragraph to excuse or postpone performance, shall have the burden of establishing that it could not reasonably have been expected to avoid the Force Majeure event and which by exercise of due diligence has been unable to overcome the failure of performance. The Settling Parties shall exercise due diligence to resolve and remove any Force Majeure event. Delay in compliance with a specific obligation under this Consent Decree due to Force Majeure as defined in this paragraph shall not excuse or delay compliance with any or all other obligations required under this Consent Decree.



1           **109. Construction:** The language in all parts of this Consent Decree shall be  
 2 construed according to its plain and ordinary meaning, except as to those terms defined in  
 3 the Storm Water Permit, the Clean Water Act, or specifically herein. The captions and  
 4 paragraph headings used in this Consent Decree are for reference only and shall not affect  
 5 the construction of this Consent Decree.

6           **110. Choice of Law:** This Consent Decree shall be governed by the laws of the  
 7 United States.

8           **111. Severability:** In the event that any of the provision, paragraph, section, or  
 9 sentence of this Consent Decree is held by a court to be unenforceable, the validity of the  
 10 enforceable provisions shall not be adversely affected.

11           **112. Correspondence:** All notices required herein or any other correspondence  
 12 pertaining to this Consent Decree shall be sent by overnight mail, courier, or email as  
 13 follows:

14 If to Plaintiff:

15           Orange County Coastkeeper  
 16           Colin Kelly, Senior Staff Attorney  
 17           3151 Airway Avenue, Suite F-110  
 18           Costa Mesa, California 92626  
 19           E-mail: colin@coastkeeper.org

20 If to Defendants:

21           Ward Benshoof  
 22           Paul J. Beard II  
 23           ALSTON & BIRD LLP  
 24           1115 Eleventh Street  
 25           Sacramento, California 95814  
 26           Email: paul.beard@alston.com

27           With copies to:  
 28           San Bernardino Steel  
 Attention: Doug Griffin  
 The Herrick Corporation  
 3003 East Hammer Lane  
 Stockton, CA 95212  
 Email: dougg@herricksteel.com

1        Notifications of communications shall be deemed submitted on the date that they  
 2        are emailed, or postmarked and sent by first-class mail or deposited with an overnight  
 3        mail/delivery service. Any changes of address or addressees shall be communicated in  
 4        the manner described above for giving notices.

5        **113. Execution in Counterparts:** The Consent Decree may be executed in any  
 6        number of counterparts, all of which together shall constitute one original document.  
 7        Telecopy, email of a .pdf signature, and/or facsimile copies of original signature shall be  
 8        deemed to be originally executed counterparts of this Consent Decree.

9        **114. Authority to Sign:** The undersigned representatives for Waterkeeper and  
 10       Defendants each certify that he/she is fully authorized by the party whom he/she  
 11       represents to enter into the terms and conditions of this Consent Decree.

12       **115. Signatures:** The Parties' signatures to this Consent Decree transmitted by  
 13       facsimile or electronic mail transmission shall be deemed binding.

14       **116. Integration Clause:** This is an integrated Consent Decree. This Consent  
 15       Decree is intended to be a full and complete statement of the terms of the agreement  
 16       between the Settling Parties and expressly supersedes any and all prior oral or written  
 17       agreements, covenants, representations and warranties, express or implied, oral or  
 18       written, of the Parties concerning the subject matter of this Consent Decree.

19       **117. Full Settlement:** This Consent Decree constitutes a full and final settlement  
 20       of this matter. The Court's entry of this Consent Decree shall constitute entry of a final  
 21       judgment in this case.

22       **118. Diligence:** Defendants shall diligently file and pursue all required permit  
 23       applications for the structural BMPs and shall diligently procure contractors, labor, and  
 24       materials needed to complete all structural BMPs by the required deadlines.

25       **119. Negotiated Agreement:** The Parties have negotiated this Consent Decree,  
 26       and agree that it shall not be construed against the party preparing it, but shall be  
 27       construed as if the Parties jointly prepared this Consent Decree, and any uncertainty and  
 28       ambiguity shall not be interpreted against any one party.

120. **Modification of the Consent Decree:** This Consent Decree, and any provisions herein, may not be changed, waived, or discharged, or terminated unless by a written instrument, signed by each of the Parties and approved by the Court.

121. **Assignment:** Subject only to the express restrictions contained in this Consent Decree, all of the rights, duties and obligations contained in this Consent Decree shall inure to the benefit of and be binding upon the Parties, and their successors and assigns.

122. The Settling Parties agree to be bound by this Consent Decree and not to contest its validity in any subsequent proceeding to implement or enforce its terms. By entering into this Consent Decree, Defendants do not admit liability for any purpose as to any allegation or matter arising out of the 60-Day Notice or the Complaint.

**IN WITNESS WHEREOF**, the undersigned have executed this Consent Decree as of the date first set forth below.

APPROVED AS TO CONTENT

Dated:

June 16, 2016

By: Garry Brown  
Garry Brown  
Inland Empire Waterkeeper

Dated:

June 16, 2016

By: Garry Brown  
Garry Brown  
Orange County Coastkeeper

Dated:

\_\_\_\_\_, 2016

By: \_\_\_\_\_  
Doug Griffin  
San Bernardino Steel

Dated:

\_\_\_\_\_, 2016

By: \_\_\_\_\_  
Doug Griffin  
The Herrick Corporation

1        **120. Modification of the Consent Decree:** This Consent Decree, and any  
 2 provisions herein, may not be changed, waived, or discharged, or terminated unless by a  
 3 written instrument, signed by each of the Parties and approved by the Court.

4        **121. Assignment:** Subject only to the express restrictions contained in this  
 5 Consent Decree, all of the rights, duties and obligations contained in this Consent Decree  
 6 shall inure to the benefit of and be binding upon the Parties, and their successors and  
 7 assigns.

8        **122.** The Settling Parties agree to be bound by this Consent Decree and not to  
 9 contest its validity in any subsequent proceeding to implement or enforce its terms. By  
 10 entering into this Consent Decree, Defendants do not admit liability for any purpose as to  
 11 any allegation or matter arising out of the 60-Day Notice or the Complaint.

12        **IN WITNESS WHEREOF,** the undersigned have executed this Consent Decree  
 13 as of the date first set forth below.

14  
 15 APPROVED AS TO CONTENT

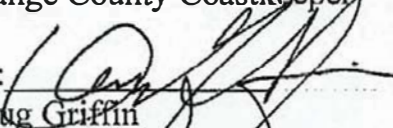
16  
 17  
 18 Dated: \_\_\_\_\_, 2016

By: \_\_\_\_\_  
 Garry Brown  
 Inland Empire Waterkeeper


19  
 20 Dated: \_\_\_\_\_, 2016

By: \_\_\_\_\_  
 Garry Brown  
 Orange County Coastkeeper

21  
 22  
 23 Dated: 6/24, 2016

By:   
 Doug Griffin  
 San Bernardino Steel

24  
 25  
 26 Dated: 6/24, 2016

By:   
 Doug Griffin  
 The Herrick Corporation

1 APPROVED AS TO FORM

2 ORANGE COUNTY COASTKEEPER  
3 INLAND EMPIRE WATERKEEPER

4 Dated: June 17<sup>th</sup>, 2016

5 By: Colin Kelly  
6 Colin Kelly  
7 Attorney for Plaintiffs

8 LAW OFFICE OF JENNIFER F. NOVAK

9 Dated: June 27, 2016

10 By: Jennifer F. Novak  
11 Jennifer F. Novak  
12 Law Office of Jennifer F. Novak  
13 Attorney for Plaintiffs

14 SAN BERNARDINO STEEL  
15 THE HERRICK CORPORATION

16 Dated: \_\_\_\_\_, 2016

17 By: \_\_\_\_\_  
18 Paul J. Beard II  
19 Attorney for Defendants

20 **IT IS SO ORDERED.**

21 UNITED STATES DISTRICT COURT  
22 CENTRAL DISTRICT OF CALIFORNIA

23 Dated: August 30, 2016

24 Virginia A. Phillips  
25 Honorable Virginia A. Phillips  
26  
27  
28



1 APPROVED AS TO FORM

2 ORANGE COUNTY COASTKEEPER  
3 INLAND EMPIRE WATERKEEPER

4 Dated: \_\_\_\_\_, 2016

5 By: \_\_\_\_\_  
6 Colin Kelly  
7 Attorney for Plaintiffs


8 LAW OFFICE OF JENNIFER F. NOVAK

9 Dated: \_\_\_\_\_, 2016

10 By: \_\_\_\_\_  
11 Jennifer F. Novak  
12 Law Office of Jennifer F. Novak  
13 Attorney for Plaintiffs

14 SAN BERNARDINO STEEL  
15 THE HERRICK CORPORATION

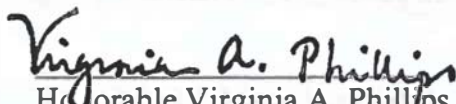
16 Dated: 6/24, 2016

17 By:   
18 Paul J. Beard II  
19 Attorney for Defendants

20 IT IS SO ORDERED.

21 UNITED STATES DISTRICT COURT  
22 CENTRAL DISTRICT OF CALIFORNIA

23 Dated: August 30, 2016

24   
25 Honorable Virginia A. Phillips  
26  
27  
28